



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

HD:hd

Docket No: 03990-99

27 March 2000

CAPT [REDACTED] MSC USN

Dear Captain [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 23 March 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by the Bureau of Medicine and Surgery dated 15 December 1999 and the Deputy Chief of Naval Operations (DCNO) N131M3 dated 6 March 2000, copies of which are attached. The Board also considered your letter dated 13 March 2000.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the DCNO (N131M3) advisory opinion. They noted the term "active status" as used in the applicable law does not refer to active duty. Rather, title 10, United States Code, section 101(d)(4) defines this term as follows: "the status of a member of a reserve component who is not in the inactive Army National Guard or inactive Air National Guard, on an inactive status list, or in the Retired Reserve." In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
BUREAU OF MEDICINE AND SURGERY
2300 E STREET NW
WASHINGTON DC 20372-5300

3990-99

IN REPLY REFER TO

1120
Ser 522/00-5917
15 Dec 99

From: Chief, Bureau of Medicine and Surgery
To: Board for Correction of Naval Records

Subj: ADVISORY OPINIONS ICO CAPT [REDACTED]
[REDACTED]

Ref: (a) NAVMILPERSNOTE 1821 OF 13 DEC 82

Encl: (1) BCNR Application ICO [REDACTED]

1. Enclosure (1) is forwarded without an advisory opinion. The original BCNR application was never received by this office - the enclosure is a copy obtained from the member.

2. Captain [REDACTED] retirement date was calculated per reference (a). NAVMILPERS determined the computation method for the Note. BUMED did not calculate the date or determine the computation method.

3. BCNR request should be forwarded to the cognizant code at NAVMILPERS for an advisory opinion.

4. Your point of contact is Command [REDACTED] NC, USN, who may be reached at [REDACTED].
[REDACTED]
[REDACTED]
[REDACTED]

By direction



3990-99

DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, D.C. 20350-2000

IN REPLY REFER TO

1000
Ser N131M/OU577017
06 MARCH 2000

From: Director, Officer Personnel Plans and Policy Division
(N131)
To: BCNR Coordinator (Pers-00ZCB)

Subj: ADVISORY OPINION ICO CA [REDACTED]
[REDACTED] NUMB [REDACTED]

Ref: (a) BCNR Coord request received 4 Feb 2000
(b) NMPCNOTE 1821 of 13 DEC 81
(c) SECNAVINST 1821.1 of 29 JAN 82
(d) Title 10 USC, Section 533

1. In response to reference (a), we do not concur with the award of additional constructive credit requested by [REDACTED] and submit the following information.

2. [REDACTED] was assigned his total commissioned service in accordance with references (b) and (c). The constructive service credit is calculated and given upon initial appointment. Per reference (d), constructive service may not be credited for experience obtained while serving as a commissioned officer on active duty or in an active status. [REDACTED] served in the active reserve force during the same period requested for work experience credit. Therefore, the constructive service credit cannot, by law, be granted.

3. For further assistance, my point of contact is [REDACTED] at [REDACTED]
[REDACTED]
[REDACTED]